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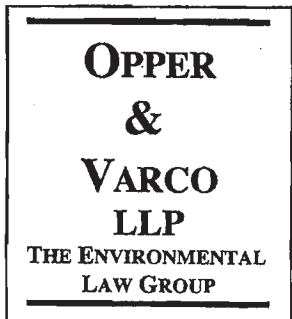
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2006 DEC 14 AM 11:11

December 13, 2006



Mr. Thomas Alo  
Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: **Former Palomar Plating Facility located at 722 West Fourth Avenue, Escondido, California**

SMC:20-0275.05 <sup>h</sup>alot

Dear Mr. Alo:

As I reported to you earlier, the transaction that resulted in the title to this property transferring from Mr. Harding (as Trustee for the Harding Family Trust) to MKR Properties, Inc. closed on October 19, 2006. At the time of the transaction, the parties agreed to record a restrictive Deed Covenant that would alert future potential buyers (or other interested stakeholders) about site conditions, and the restrictions they should observe in that regard. A copy of that covenant is attached for your information. Please don't hesitate to call or write for more information as may be necessary.

I will inquire of Mr. Harding about when the trust acquired the property, and when Palomar Plating began operations, and I will share with you what I learn in that regard.

Thanks to you and Mr. Peuron for all of your help.

Sincerely,

OPPER & VARCO LLP

Richard G. Oppen

RGO/jlk

Encl.

cc: Mr. Todd Harding

Doc # 2006-0868241



DEC 07, 2006 11:10 AM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 38.00  
PAGES: 11



2006-0868241

RECORDING REQUESTED BY:

Todd Harding, Trustee  
Harding Family Trust  
312 McLaren Lane  
Bishop, CA 93514

WHEN RECORDED, MAIL TO:

Todd Harding, Trustee  
Harding Family Trust  
312 McLaren Lane  
Bishop, CA 93514

5463

Accommodation

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ENVIRONMENTAL RESTRICTION AND COVENANT  
(Civil Code section 1471)

For Property at:

705-723 West Third Avenue  
and  
722-740 West Fourth Avenue  
Escondido, California

San Diego County Assessor's Parcel No.: 233-10-003

This Environmental Restriction and Covenant ("Covenant") is made effective as of 11-20-06, 2006 by and between Todd Harding, Trustee of the Harding Family Trust, hereinafter the "Seller" or "Covenantor" of property situated in Escondido, County of San Diego, State of California, described in the legal description (Exhibit "A"), attached hereto and incorporated herein by this reference (the "Property"), and [Buyer] MKR Properties, Inc. [Signature] hereinafter the "Owner" or "Covantee," of the Property:

Covenantor has determined that each Restriction contained in this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Covantee, collectively referred to as the "Parties", hereby agree that pursuant to Civil Code section 1471 that the use of the Property be restricted as set forth in this Covenant and that this Covenant shall run with the land.

This document is being recorded by  
First American Title Insurance Co. as  
an accommodation only. It has not  
been examined as to execution or  
impact on title.

5464X

## ARTICLE I DEFINITIONS

1.01 For purposes of this Covenant, the term "Hazardous Substance" includes the definition of hazardous materials contained in H&SC section 25260 and is further defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare.

1.02 For purposes of this Covenant, the term "Hazardous Substance Condition" is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

1.03 "Seller" means Todd Harding, Trustee of the Harding Family Trust, also known as the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

1.04 "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

1.05 "Owner" means any future owner of record subsequent to Todd Harding and/or the Harding Family Trust, as identified in the County Recorder's official books, including [Buyer] ~~MKR Properties, Inc. a California Corporation~~ its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

1.06 "Subsurface Activities" shall mean any activity that will disturb the soil or that may encounter groundwater, including, but not limited to excavation, grading, removal, trenching, filling, earth movement, mining or drilling.

## ARTICLE II STATEMENT OF FACTS

2.01 The Property, known as San Diego County Assessor's Parcel No.: 233-10-003, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference.

2.02 Notice of Hazardous Substance Conditions. The Property was previously occupied by a metal plating company. Contaminants associated with metal plating activities and underground storage tanks were identified in soil and groundwater at or beneath the Property. Corrective action orders were issued against the Property by both the United States Environmental Protection Agency and the California Regional Water Quality Board ("RWQCB").

Noted on 10/10/01 that the  
a. 10/10/01 that the  
for 10/10/01 that the  
for 10/10/01 that the

2.03 Agreement between Owner and Seller. Owner, [Buyer] MKR Properties, Inc. as a condition of purchase of the Property, entered into an Agreement dated October 19, 2006 with Seller, whereby Owner assumed all responsibility and liability for compliance with regulatory requirements related to Hazardous Substance Conditions at the Property, and Owner further agreed to hold Seller harmless for any damages resulting therefrom.

2.04 Purpose of Covenant. The purpose of this Covenant is to: 1) place future Owners or Occupants on notice of Hazardous Substance Conditions at the Property; 2) place restrictions on Subsurface Activities to prevent inadvertent exposure of workers or Occupants to Hazardous Substance Conditions; and 3) provide constructive notice of this Agreement between Seller and Owner to future Owners/Occupants.

### ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code Section 1471; and (b) inures to the benefit of the Covenantee and passes with each and every portion of the Property.

3.02 Binding upon Owners/Occupants. Pursuant to Civil Code Section 1471(b), this Covenant expressly binds all future and successive Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03 Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC Section 25359.7.

3.04 Incorporation into Deeds, Leases and Subleases. From and after the date of recordation of this Covenant, the Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE OFFICIAL RECORDS OF THE OFFICE OF THE        SAN        DIEGO        COUNTY        RECORDER        ON [DATE] \_\_\_\_\_, FILE NO. \_\_\_\_\_.

**ARTICLE IV**  
**RESTRICTIONS**

4.01 Soil and Groundwater Management/Subsurface Activities

All Subsurface Activities will be subject to the following Restrictions:

(a) No Subsurface Activities should take place on the Property without advance notification and approval by the RWQCB. The Owner shall provide the RWQCB written notice at least fourteen (14) days in advance of proposed activities. Owner shall comply with RWQCB requirements and obtain RWQCB approval before commencement with Subsurface Activities.

(b) Owner should take all necessary precautions to protect workers from potential exposure to Hazardous Substance Conditions at the Property during Subsurface Activities including, but not limited to ensuring that all contractors or employees engaged in Subsurface Activities do so in compliance with federal and California Occupational Safety and Health Administration (OSHA) requirements for workers at Hazardous Waste Sites including provision of: a) appropriate personnel protective equipment; b) proper training in accordance with Title 29 Code of Federal Regulations (CFR) 1910.120 for workers involved with Hazardous waste operations and emergency response; and c) ensuring that contractors/or persons engaged in such activities have the appropriate licenses and experience for performing work at Hazardous Waste Sites; and

(c) Any contaminated soils or groundwater brought to the surface by any Subsurface Activities should be managed in accordance with all applicable provisions of local, state and federal law pertaining to characterization, transportation and disposal of Hazardous Waste (as applicable).

(d) Hiring of an environmental consultant for advice in the above matters is strongly recommended.

**ARTICLE V**  
**VARIANCE, TERMINATION, AND TERM**

5.01 Variance. Owner, Covenantee, or any other aggrieved person, may apply to the RWQCB for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233 as implemented by the RWQCB pursuant to H&SC Section 25264.

5.02 Termination. Owner, Covenantee, or any other aggrieved person, may apply to the RWQCB for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234, as implemented by the RWQCB pursuant to H&SC Section 25264. Any such termination or modification of the restrictions or terms contained herein as may be granted by RWQCB shall become effective on recording and shall supersede or modify the Restrictions and terms contained herein.

5.03 Term. Unless ended or modified in accordance with the Termination paragraph above, by law, or by the RWQCB in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## **ARTICLE VI**

### **MISCELLANEOUS**

6.01 RWQCB References. All references to the RWQCB include successor agencies/departments or any other federal, state or local regulatory agency exercising jurisdiction over Hazardous Substance Conditions on the Property.

6.02 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, with the County Recorder's Office for the County of San Diego within ten (10) days of the Covenantor's receipt of a fully executed original.

6.03 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To RWQCB:                      California Regional Water Quality Control Board  
    San Diego Region  
    9174 Sky Park Court, Suite 100  
    San Diego, CA 92123-4353  
    Reference: SMC:20-0275.05:peurp (include in all correspondence)  
    Contact: Peter Peuron, ph. (858) 637-7137

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph. After conveyance of this Property by the Covenantor future Notices shall be the responsibility of the owner of record as identified in the County Recorder's official books.

6.04 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

6.05 Statutory References. All statutory references include successor provisions.



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IN WITNESS WHEREOF, the Parties have executed this Covenant to be effective as of the date first written above.

Covenantor:

By: \_\_\_\_\_  
Covenantor, Todd Harding, Trustee  
Harding Family Trust


ATTEST:

\_\_\_\_\_  
Witness

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel

Covenantee/Owner:

By:   
Authorized Signatory  
MKA Property

ATTEST:

\_\_\_\_\_, Witness

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel

IN WITNESS WHEREOF, the Parties have executed this Covenant to be effective as of the date first written above.

Covenantor:

By: Todd A. Harding Trustee  
Harding Family Trust  
 Covenantor, Todd Harding, Trustee  
 Harding Family Trust

ATTEST:

\_\_\_\_\_  
 Witness

APPROVED AS TO FORM:

\_\_\_\_\_  
 Counsel

Covenantee/Owner:

\_\_\_\_\_  
 By: \_\_\_\_\_  
 Authorized Signatory

ATTEST:

\_\_\_\_\_, Witness

APPROVED AS TO FORM:

\_\_\_\_\_  
 Counsel



STATE OF CALIFORNIA )

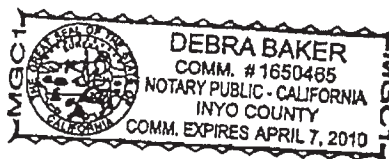
COUNTY OF Inyo )ss.

On Nov 6, 2006, before me, Debra Baker notary public, personally appeared Todd A. Harding, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Debra Baker

(SEAL)



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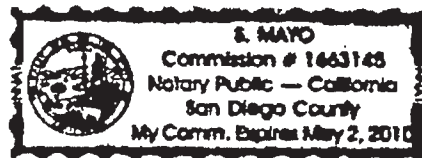
STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF San Diego )

On November 20, 2006 before me, S. Mayo, Notary Public, personally appeared Harold M. Behrmann, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



(SEAL)

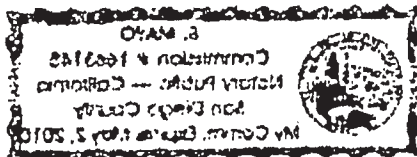


5470  
2023

STATE OF CALIFORNIA    )  
                                  )ss.  
COUNTY OF                )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



(SEAL)

5471

EXHIBIT A

**LEGAL DESCRIPTION**

Real property in the City of Escondido, County of San Diego, State of California, described as follows:

LOTS 5, 6, 9, 10, 11 AND 12 IN BLOCK 91 ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON JULY 10, 1886.

ALSO THAT PORTION OF THE SOUTHEASTERLY HALF OF THE ALLEY, NOW VACATED AND CLOSE TO PUBLIC USE IN SAID BLOCK 91 WHICH ADJOINS SAID LOTS 5 AND 6 ON THE NORTHWEST, AND ALSO THAT PORTION OF THE NORTHWESTERLY HALF OF SAID VACATED ALLEY ADJOINING SAID LOTS 9, 10, 11 AND 12 ON THE SOUTHEAST.

EXCEPTING-THEREFROM ANY PORTION OF THE ABOVE DESCRIBED LAND LYING WITHIN THAT PARCEL OF LAND DESCRIBED IN DEED TO THE CALIFORNIA CENTRAL RAILWAY COMPANY, RECORDED IN BOOK 146, PAGE 196 OF DEEDS AND IN BOOK 146, PAGE 202 OF DEEDS.

APN: 233-100-03-00 (Affects: Lots 10, 11 and 12); 233-100-04-00 (Affects: Lot 9); and 233-100-10-00 (Affects: Lots 5 and 6)